

Montana Water Court
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FILED
07/07/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0197-R-2020
Lambert, Kathryn
3.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Guy E. Schram; Marlene A. Schram

CASE 43B-0197-R-2020
43B 193704-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The ditch identified on the abstract for this claim in the Preliminary Decree is Upland Ditch. During preparation of the Preliminary Decree, the point of diversion legal description was changed to the legal description for Mill Creek Flat Ditch, not for Upland Ditch. In 2021, the Montana Department of Natural Resources and Conservation ["DNRC"] prepared a new

marked aerial photograph for the Mill Creek claimants and the Court to use to determine the correct ditch name and point of diversion legal description. On April 5, 2023 the Order Re-Opening Case And Setting Filing Deadline was issued to address this error with the claimants. A copy of the new marked aerial photograph was included. Nothing was filed by the claimants. The May 9, 2023 Order Setting Show Cause Filing Deadline states:

The abstract of claim 43B 193704-00 states that the ditch name is Upland Ditch but the point of diversion legal description is for Mill Creek Flat Ditch. The Statement of Claim states that the ditch used is Upland Ditch. Therefore, it is ORDERED that the deadline is **May 30, 2023** for the claimants to file a written statement showing cause why the Court should not change the ditch name to UPLAND DITCH. If not filed by May 30, 2023, the Court will conclude the claimants agree with this change and will proceed with changing the claim as detailed above.

The last paragraph erroneously states the ditch name will be changed to Upland Ditch. It is the legal description which will be changed to Upland Ditch. Regardless, nothing was filed by the claimants indicating their disagreement that this claim is for Upland Ditch. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

FINDING OF FACT

The Preliminary Decree states that the point of diversion legal description is the NESWNE section 3, T6N, R9E, PARK. The legal description should be the NENENW section 3, T6N, R9E, PARK. The ditch name is already correctly appearing on the abstract as UPLAND DITCH.

CONCLUSION OF LAW

The Statement of Claim and the new DNRC marked aerial photograph are sufficient to

contradict and overcome the prima facie claim as incorrectly modified prior to issuance of the Preliminary Decree.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the change specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended change has been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Guy E. Schram
Marlene A. Schram
155 Pray Rd
Livingston, MT 59047

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 193704-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: GUY E SCHRAM
155 PRAY RD
LIVINGSTON, MT 59047 8708

MARLENE A SCHRAM
155 PRAY RD
LIVINGSTON, MT 59047 8708

Priority Date: JUNE 1, 1903

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 224.40 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 40.00

Source Name: MILL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENW	3	6S	9E	PARK

Period of Diversion: APRIL 1 TO NOVEMBER 15

Diversion Means: HEADGATE

Ditch Name: UPLAND DITCH

Period of Use: APRIL 1 TO NOVEMBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	40.00		E2E2SE	19	5S	9E	PARK

Total: 40.00

Remarks:

AUTHORIZATION TO CHANGE ISSUED 09/14/1988 FOR CHANGE IN POINT OF DIVERSION. NOTICE OF COMPLETION DUE 11/30/1990. SEE 43B 193703-00.

LEASE AUTHORIZATION TO CHANGE THE POINT, PLACE, AND PURPOSE OF USE ISSUED 01/27/1993 TO THE DEPARTMENT OF FISH, WILDLIFE & PARKS. SEE 43B 5862-00.